HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL NO. 293 OF 2007

BETWEEN:

The Executive Engineer (U),
APSRTC, Jubilee Bus Station,
Picket: Secunderabad

.....Appellant

And

T. Venkataiah and another

.....Respondents

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:: JUDGMENT ::

Counsel for the appellant : Shri V.T.M. Prasad

27th April 2007

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 23.10.2006 vide which the learned Single Judge dismissed the writ petition filed by the

appellant against award dated 26.02.2005 passed by Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (respondent No.2 herein) in I.D.No.34 of 2001 for reinstatement of respondent No.1 – T. Venkataiah with all consequential benefits.

A perusal of the record shows that respondent No.1 filed an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act') for quashing the action of the employer to terminate his service with effect from 06.01.2001. In the statement of claim filed by him, respondent No.1 averred that he was initially engaged as office boy in the year 1986 on casual basis in the office of Chief Engineer of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation'); that the Executive Engineer (U), APS RTC, Jubilee Bus Station, Picket, Secunderabad (the appellant herein) recommended his case for regularisation of service, but no action was taken on the said recommendation and that his service was discontinued with effect from 06.01.2001. Respondent No.1 further averred that he had worked for 240 days in each of the fourteen years of employment and that his service was terminated without complying with the conditions specified in Section 25-F of the Act.

In the counter filed on behalf of the appellant, it was averred that respondent No.1 was never engaged as a casual labour; that there did not exist employer-employee relationship between the Corporation and respondent No.1; that he did not work as office boy or in any other capacity under the Chief Engineer of the Corporation and that his case was not recommended by Executive Engineer (U) for regularisation of service.

On the pleadings of the parties, respondent No.2 formulated the following points:

> " 1. Whether there is proof @ the petitioner's services were engaged as an office boy on casual basis by the respondent corporation and that his services were terminated without following the lawful procedure?

2. Whether the petitioner is entitled to the relief of reinstatement into service as a casual worker?"

Respondent No.1 appeared as WW1 and made a statement in support of his claim. He also produced documents which were marked as Exs.W1 to W11. On behalf of the appellant, Deputy Executive Engineer – M. Suneetha was examined as M.W.1, but no document was produced.

Respondent No.2 analysed the evidence produced by the parties and held that respondent No.1 has been able to prove the factum of his having worked in the service of the Corporation on casual basis and that his service was terminated without complying with the mandate of Section 25-F of the Act. He then referred to order dated 30.11.1999 passed by the learned Single Judge in Writ Petition No.6903 of 1997 and judgment dated 19.02.2003 of the Division Bench in Writ Appeal No. 282 of 2000 and held that the termination of the service of respondent No.1 is vitiated due to violation of Section 25-F of the Act. Accordingly, he passed award dated 26.02.2005 for reinstatement of respondent No.1 with all consequential benefits.

The appellant challenged the award in Writ Petition No.20484 of 2005, but could not persuade the learned Single Judge to interfere with the finding of fact recorded by respondent No.2 on the issue of employer-employee relationship between the parties and termination of the service of respondent No.1 in violation of Section 25-F of the Act.

Shri V.T.M. Prasad, learned counsel for the appellant reiterated the arguments made before the learned Single Judge and submitted that the award passed by respondent No.2 is liable to be set aside because the same is not based on correct appreciation of evidence produced by the parties. Shri Prasad emphasized that the evidence produced by respondent No.1 did not establish the employer-employee relationship between the parties and yet respondent No.2

arbitrarily ordained his reinstatement in the service of the Corporation with consequential benefits. Learned counsel submitted that the identity cards and certificates issued by some of its officers are not sufficient to establish the employer-employee relationship and respondent No.2 committed a serious error by relying on the same for granting relief to respondent No.1. An alternative argument put forward by Shri Prasad is that respondent No.1 was engaged by civil contractor and not by the Corporation and, therefore, respondent No.2 committed a jurisdictional error by ordering his reinstatement in the employment of the corporation.

We have given serious thought to the arguments of the learned counsel and examined the matter keeping in view the trend of the recent decisions that the burden to establish employer-employee relationship and violation of Section 25-F is on the workman and not the employer – **Range Forest Officer v. S.T. Hadimani**[1], **Essen Deinki v. Rajiv Kumar**[2], **Municipal Corporation, Faridabad v. Siri Niwas**[3], **M.P. Electricity Board v. Hariram**[4], **Manager, Reserve Bank of India v. S. Mani**[5], **Surendranagar District Panchayat v. Jethabhai Pitamberbhai**[6], **Batala Coop. Sugar Mills Ltd. V. Sowaran Singh**[7], **Surendranagar District Panchayat v. Dahyabhai Amarsinh**[8] and **Surendranagar Distt. Panchayat v. Gangaben Laljibhai**[9].

In support of his claim that he was engaged as an office boy in the year 1986 on casual basis and he had worked in the Corporation for a period of fourteen years, respondent No.1 not only examined himself but also produced documents marked Exs.W1 to W11. In the cross-examination, he stated that Shri Sivaramaiah, Executive Engineer had given him job and he used to be kept by the officers at the construction places of the Corporation. Four of the documents i.e.

Ex.W1 to Ex.W4 produced by respondent No.1 are bunch of identity cards/E.D. passes issued by the officers of the Corporation having validity period from 20.05.1995 to 15.09.1998. Ex.W5 is the certificate issued by Deputy Executive Engineer showing that respondent No.1 was working at Jubilee Bus Station in the office of Executive Engineer (M). Exs.W.6 and W.7 are certificates issued by Deputy Executive Engineer showing that respondent No.1 worked as casual labour from October 1994 to June 2000 in the office of Deputy Executive Engineer (U.II), Sub-Division under Executive Engineer (U) office, Jubilee Bus Station, Picket, Secunderabad. Ex.W.8 is the list of casual staff of the Corporation. In that list, name of respondent No.1 is shown at Sl.No.2 and his date of appointment is indicated as 01.01.1986.

Respondent No.2 found the evidence of respondent No.1 worthy of reliance and concluded that he has been able to establish the employer-employee relationship. This is evinced from paragraphs 8,9, 10 and 12 of the award, which are extracted below:

> "8. The petitioner stated in his evidence that he was appointed in the year 1986 by the respondent corporation as an office boy and was attached to the Jubilee Bus Station (JBS) Executive Engineer (U) office. He used to work under the said Executive Engineer he was looking after the works of construction of bus shelters, but depots of the Corporation. The Corporation issued to him identity cards from time to time from the year 1986 till he worked in the year 2002. He exhibited Ex.W.1, Ex.W.2 copy of identity card issued to be valid from 20.05.1995 to 19.11.1995. Ex.W.2 valid up to 31.12.1996. Ex.W.3 bunch of cards starting from 25.05.1997 valid up to 30.03.2000 and starting from 12.12.1997 valid up to 15.09.1988. He further exhibited bunch of E.D. passes as Ex.W.4 authorising him to travel in the RTC buses. He stated in his evidence that he worked in the corporation from 3.1.1986 to 29.12.2001. In his cross-examination, he said that Sri Sivaramaiah, Executive Director gave his the job and that he worked under Sri Siva Ramaiah who used to pay him the salary. When he was asked what was his nature of work he

said that he was an office boy and used to be kept by the officers a the construction places of the corporation. What is to be taken note of is, the genuineness of the identity cards and ED passes Ex.W1 to Ex.W4 are not south to be contradicted by the respondent. However, realising the said mistake which would vindicate the petitioner's claim that he worked for it the respondent tried to nullify it by making the witness for the corporation MW.1 to speak in her evidence that they have issued identity cards of the Corporation to the workers of the contractors since they have to enter the work sites of the corporation and that they used issue ED passes also to the said workers. Before that, a new plea was introduced in the evidence of MW.1 though not stated in the counter that the petitioner used to do the Supervisory work on behalf of the contractor at the work site and the contractor used to pay the remuneration and wages to him which is not a fact established and that the corporation will have no control over the labourers and staff of the contractors But the petitioner's claim is engraved in their own document a letter issued by Executive Engineer, Ex.W.5 whose genuineness was also not to be contradicted, where the said officer had clearly stated writing the name of the petitioner that the petitioner is working at the BS in the office of Executive Engineer (M) and the same was confirmed by the Dy. Executive Engineer in his certificate. The petitioner also marked that certificate as Ex.W.6 whose genuineness was also not sought to be contradicted wherein the Dy. Executive Engineer of the APSRTC of picket depot has certified that the petitioner was working as a casual labour from October 1994 to March 1999 in Dy. Executive Engineer (U.II) Sub-Division under Executive Engineer (Urban) Office JBS Picket Secunderabad. There is another certificate to that effect marked as Ex.W.7 issued by the said authority certifying the petitioner had worked from March 1999 to June 2000 under the same office referred supra.

9. Now coming back to these identity cards and ED passes what they would prove a careful reading of them reveal there shall not be any he sitation that the petitioner always considered as a worker of the APSRTC Corporation though engaged on casual basis. Ex.W.1, Ex.W.2 identity cards were shown issued by the

accounts. Superintendent of the Executive Engineer (Urban) APSRTC JBS Picket in the same of APSRTC clearly stating that the designation of the petitioner is office boy casual his place of work is Executive Engineer (Urban) Hyderabad Picket Secunderabad. In Ex.W.2 identity card also it is similarly mentioned that he is the office boy of the corporation. In the bunch of identity cards Ex.W.3 it is clearly written that the petitioner is the office boy his work place is Executive Engineer (U) JBS Picket Secunderabad. These cards are all about 3 years period. Ex.W.4 bunch of ED passes also refer to that the petitioner who is the bearer of this certificate belong to CD Department and is permitted to travel free from Hyderabad to Srisailam, Ibrahimpatnams and Nagar Kurnool. When these identity cards are read with Ex.W.5 letter and Ex.W.6 and W.7 certificates they clearly establish that the petitioner was working as a caused labour under Dy. Executive Engineer (U) Sub-Division APSRTC JBS/Picket Secunderabad.

10. Not only the above referred documents there is another official document which settle the issue is exhibited as Ex.W.8 issued by no other than the APSRTC clearly stating that a list of casual staff of the APSRTC is being submitted to the Executive Engineer (Projects) HG APSRTC Musheerabad, Hyderabad where it is mentioned that the list is relating to the names of the casual staff who is working and in which division. In this documents for the purpose of consideration of regularisation of the casuals the name of the petitioner is shown at Sl.No.2 in the statement where it is written that his date of joining is 1.1.1986 his qualification is 3rd class he has worked from January 1986 to July 1993 with EE (Projects) from August 1993 to September 1994 with EE (Maintenance) and from October 1994 to till the date of this letter with EE(U).

12 I have to refer again the new plea raised by MW.1 that the petitioner was appointed by contractor and the wages paid by the contractor which was not taken at the earlier point, which obviously is a trial to overcome the documentary evidence proving the claim of the petitioner that he worked in the RTC as a casual worker. Surprisingly it is revealed from the evidence of petitioner

> what even alter filing of this application in this court his services were utilised by the Corporation. He exhibited Xerox copies of some cheques. Vide Ex.W.11 and stated that after he filed this petition the respondent has handed over various cheques to him for the purpose of drawing those amounts and to disburse to EE and AEs. This was not sought to be contradicted. But the learned law officer of the RTC tried to witness that because of the strike by the regular employee his services were utilised. It is to be taken note of unless the petitioner had worked for the corporation and under the officials therein they would not have handed over cheques of so such of value not for passing as to any one just deposit this in bank but to draw and bring the amount."

In our opinion, the above analysis of the evidence made by respondent No.2 does not suffer from any legal infirmity. It is neither the pleaded case of the appellant nor Shri V.T.M. Prasad argued that the documents produced by respondent No.1 were fake or the contents thereof had been fabricated. Therefore, we do not see any reason to interfere with the conclusion recorded by respondent No.2 that respondent No.1 has been able to discharge the burden which lay upon him to prove the employer-employee relationship.

In **R.M. Yellatti v. Asstt. Executive Engineer**[10], a three-judges Bench of the Supreme Court referred to the propositions laid down in **Municipal Corporation, Faridabad v. Siri Niwas (supra), Range Forest Officer v. S.T. Hadimani (surpa)** and held that the Division Bench of High Court was not justified in interfering with the concurrent finding recorded by the Labour Court and the learned Single Judge on the issue of existence of employer-employee relationship and violation of Section 25-F. Paragraph 18 of that judgment, which has direct bearing on the present case, is extracted below:

> " Now applying the above decision to the facts of the present case, we find that the workman herein had stepped into the witness box. He had called upon the

management to produce the nominal muster rolls for the period commencing from 22.11.1988 to 20.6.1994. This period is the period borne out by the certificate (Ext.W.1) issued by the former Assistant Executive Engineer. The evidence in rebuttal from the side of the management needs to be noticed. The management produced five nominal muster rolls (NMRs.) out of which 3 NMRs, Exts. M-1, M-2 and M-3, did not even relate to the period concerned. The relevant NMRs. produced by the management were Exts.M-4 and M-5, which indicated that the workmen had worked for 43 days during the period 21.01.1994 to 20.02.1994 and 21.03.1994 to 20.04.1994 respectively. There is no explanation from the side of the management as to why for the remaining period the nominal muster rolls were not produced. The Labour Court has rightly held that there is nothing to disbelieve the certificate (Ext.W.1). The High Court in its impugned judgment has not given reasons for discarding the said certificate. In the circumstances, we are of the view that the Division Bench of the High Court ought not to have interfered with the concurrent findings of fact recorded by the Labour Court and confirmed by the learned Single Judge vide order dated 07.06.2000 in Writ Petition No.17636 of 2000. This is not, therefore, a case where the allegations of the workman are founded merely on an affidavit. He has produced cogent evidence in support of his case. The workman was working in SD-1, Athani and Ext.W-1 was issued by the former Assistant Executive Engineer, Hipparagi Dam Construction Division No.1, Athani 591 304. In the present case, the defence of the management was that although Ext.W-1 refers to the period 22.11.1998 to 20.06.1994, the workman had not worked as a daily-wager on all days during that period. If so, the management was duty-bound to produce before the Labour Court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ext.W-1). IN the

circumstances, the Division Bench of the High Court had erred in interfering with the concurrent findings of fact."

In our view, respondent No.1's case is squarely covered by the ratio of the above-noted judgment and the learned Single Judge did not commit any error by refusing to interfere with the award.

We are further of the view that the findings recorded by respondent No.2 on the two points formulated by him are based on correct appreciation of evidence and do not call for interference under Article 226 of the Constitution of India which vests limited power of judicial review in such matters - **Syed Yakoob v. K.S.Radhakrishnan and others**[11], **R.S. Saini v. State of Punjab and others**[12], **State of Orissa v. Bidyabhushan Mohapatra**[13], **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan**[14] and **Surya Dev Rai v. Ram Chander Rai**[15].

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.558 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

27.04.2007
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[1] (2002) 3 SCC 25

[2] (2002) 8 SCC 400

[3] (2004) 8 SCC 195

[4] (2004) 8 SCC 246

[5] (2005) 5 SCC 100

[6] (2005) 8 SCC 450

[7] (2005) 8 SCC 481

[8] (2005) 8 SCC 750

[9] (2006) 9 SCC 132

[10] (2006) 1 SCC 106

[11] AIR 1964 SC 477

[12] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[13] AIR 1963 SC 779

[14] AIR 1984 SC 976

[15] AIR 2003 SC 3044